

Message Text

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ACTION ARA-20

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FM AMEMBASSY PORT AU PRINCE

TO SECSTATE WASHDC 8366

C O N F I D E N T I A L SECTION 1 OF 2 PORT AU PRINCE 1511

E.O. 11652: GDS

TAGS: EIND, ETEL, PINT, HA

SUBJECT: RENEGOTIATION OF CONTRACT BETWEEN GOH AND US COMPANY
TELE-HAITI

1. SUMMARY: AT THE INSISTENCE OF THE HAITIAN GOVERNMENT A 1969 CONTRACT BETWEEN MAJORITY US-OWNED COMPANY, TELE-HAITI, AND THE GOH IS BEING RENEGOTIATED TO REMOVE A CLAUSE GIVING THE COMPANY A LONG-TERM MONOPOLY ON TELEVISION OPERATIONS IN HAITI. DESPITE SOME FALSE STEPS BY THE GOH AND EARLIER REPORTS OF POSSIBLE COERCION, THE TWO SIDES APPEAR MOVING TOWARD AGREEMENT.
END SUMMARY.

2. AT THE URGENT REQUEST OF THE GOH, A GROUP OF SIX US INVESTORS, WHO TOGETHER OWN 81 PERCENT OF THE STOCK IN TELE-HAITI (THE SOLE TELEVISION COMPANY IN THE COUNTRY), HAVE BEEN ENGAGED IN RENEGOTIATING THEIR CONTRACT WITH THE GOH. THE CONTRACT, FIRST ENTERED INTO IN 1958 AND RENEGOTIATED IN 1969, PROVIDES THAT NO OTHER TELEVISION COMPANIES WILL BE ALLOWED TO OPERATE IN HAITI FOR A PERIOD OF TWENTY-FIVE YEARS FROM 1969. ALTHOUGH THE GOH FIRST ORDERED THE AMERICAN PARTICIPANTS TO COME TO PORT-AU-PRINCE TO DISCUSS SELLING THEIR STOCK TO THE GOVERNMENT, THE HAITIAN NEGOTIATORS SWITCHED THEIR TACTICS AFTER THE FIRST WEEK AND DIRECTED THEIR EFFORTS TOWARD OBTAINING REMOVAL OF THE CLAUSE PROVIDING A MONOPOLY POSITION.

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3. THE GOH'S INITIATIVE SEEMS TO HAVE ARISEN IN PART FROM THE

ATTITUDE PREVALENT IN MOST COUNTRIES THAT ALL TELECOMMUNICATIONS SHOULD BE CLOSELY CONTROLLED BY THE STATE AND IN PART FROM THE FACT THAT PRESIDENT DUVALIER HAS APPARENTLY ONLY JUST REALIZED, UPON THE SIGNING OF A CONTRACT TO ESTABLISH AN EARTH STATION, THAT THE MAJORITY OWNERSHIP OF TELE-HAITI WAS IN AMERICAN HANDS. IN ADDITION, THE GOH HAS APPARENTLY ADOPTED A GENERAL POLICY ELIMINATING MONOPOLY CONCESSIONS IN CONTRACTS (AT LEAST MONOPOLIES GRANTED TO FOREIGN-OWNED COMPANIES). HAITIAN ATTITUDES DURING NEGOTIATIONS--VERY HARD AT THE BEGINNING--EASED IN THE SECOND PHASE OF THE TALKS AS A RESULT OF EMBASSY PRESENTATIONS OF OFFICIAL USG VIEWS ON EXPROPRIATION AND NEED FOR PROMPT PAYMENT, REALIZATION BY THE HAITIAN NEGOTIATORS THAT THE AMERICAN INVESTORS HAD ENTERED INTO THE CONTRACT AND WERE NEGOTIATING IN GOOD FAITH, AND GOH AWARENESS THAT NO FUNDS TO BUY OUT THE US INVESTORS ARE AVAILABLE.

4. IN THE FIRST STAGES OF THE NEGOTIATIONS ANOTHER MAJOR INVESTMENT DISPUTE SEEMED BREWING. SECRETARY OF INTERIOR PAUL BLANCHET INITIATED THE NEGOTIATIONS, CALLING THE AMERICAN INVESTORS TO HAITI ON 48 HOURS NOTICE TO DISCUSS THE SALE OF THEIR SHARES TO THE GOH. AFTER PRELIMINARY TALKS (HELD ON JULY 17 AND 19) US INVESTORS FIRST OFFERED TO SELL STOCK, THEN PROMISED TO PREPARE A PROPOSAL PROVIDING ASSURANCES TO GOH RE PROGRAMMING. HAVING AGREED WITH GOH THAT TALKS WOULD BE RESUMED BY AUGUST 12, THEY RETURNED TO US WHEREUPON GOH REPS CALLED ASKING THEIR IMMEDIATE RETURN. ALTHOUGH BLANCHET REMAINED COURTEOUS WHEN FACE-TO-FACE WITH THE AMERICAN INVESTORS, REPORTS EMANATING FROM BEHIND THE SCENES SUGGESTED THE GOH WOULD EXPROPRIATE AND OFFER ONLY TOKEN COMPENSATION. AT THIS STAGE, AMBASSADOR TOLD FOREIGN MINISTER AND PRESIDENT THAT US HOPED AMICABLE SOLUTION COULD BE FOUND AND APPROPRIATE GOH OFFICIALS WERE INFORMED OF US GENERAL POLICY RE EXPROPRIATION AND COMPENSATION.

5. AT GOH INSISTENCE US INVESTORS RETURNED TO HAITI EARLIER THAN SCHEDULED AND RESUMED NEGOTIATIONS JULY 31, AUGUST 1 AND 2. SECRETARY OF JUSTICE JEANTY TOOK OVER NEGOTIATIONS FOR GOH. EVIDENTLY IN RESPONSE TO AMBASSADOR'S REPRESENTATIONS, FOREIGN SECRETARY BRUTUS ATTENDED ALL CONVERSATIONS. EMBOFF ASSISTED WITH TRANSLATIONS. AT THIS STAGE, GOH OFFICIALS SAID THERE WAS NO INTENT TO TAKE OVER THE STATION BUT INSISTED THAT THE EXCLUSIVE RIGHTS OF THE COMPANY MUST BE GIVEN UP SINCE MONOPOLIES WERE CONFIDENTIAL

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UNCONSTITUTIONAL IN HAITI (ARTICLE 67 OF THE CONSTITUTION). (COMMENT: EMBASSY DISCUSSED THIS BRIEFLY WITH TWO NON-GOVERNMENT HAITIAN LAWYERS, WHO STATED UNEQUIVOCALLY THAT A MONOPOLY, SO LONG AS IT WAS GRANTED BY AN OFFICIAL DECREE, WAS NOT UNCONSTITUTIONAL. JEANTY, HOWEVER, CONTENDS THAT SUCH DECREES MUST BE SANCTIONED BY LEGISLATIVE CHAMBER (NOT DONE IN TELE-HAITI CONTRACT) AND THAT IN ANY EVENT NO STATE COULD BIND ITSELF FOREVER TO MONOPOLIES DEEMED INIMICAL TO STATE INTERESTS, THOUGH PRINCIPLE OF JUST COMPENSATION

WOULD BE OBSERVED IN ANY EXPROPRIATION ACTION.) THE NEGOTIATIONS WERE CORDIAL THROUGHOUT, WITH THE HAITIANS INSISTING AT ALL TIMES THAT THERE WAS NO QUESTION OF CONFISCATION OR OF EXPROPRIATION. ALTHOUGH HAITIAN NEGOTIATORS WERE NOT ABOVE HINTING THAT A GOVERNMENT COULD MAKE TV OPERATIONS VERY DIFFICULT IF AGREEMENT WERE NOT REACHED, THE RUMORS FROM BEHIND THE SCENE DID NOT REACH THE LEVEL THEY HAD REACHED IN THE FIRST STAGE. A TENTATIVE AGREEMENT WAS REACHED ON AUGUST 2, BUT IT REQUIRES CLEARANCE WITH THE PRESIDENT, WITH OTHER US STOCKHOLDERS OF THE COMPANY, AND WITH US BANKS WHICH HAVE LOANED MONEY FOR TV EXPANSION.

6. THE US INVESTORS ARE NEW TO THE HAITIAN SCENE BUT THEY MADE A FAVORABLE IMPRESSION ON GOH AS MEN OF GOOD WILL AND PROFESSIONAL COMPETENCE. THEY HAD JUST COMPLETED (IN MAY 1974) PURCHASE OF THE STOCK FROM THE PREVIOUS AMERICAN OWNERS, AND HAD STARTED ON A PROGRAM TO IMPROVE TECHNICAL ABILITIES AND PROGRAMMING OF THE STATION AND TO EXPAND SERVICES. BECAUSE OF THE SUDDEN ACTION OF THE GOH AND THE UNCERTAINTIES AS TO THE FUTURE, THE INVESTORS WOULD HAVE PREFERRED TO SELL THE COMPANY OUTRIGHT TO THE GOH. THEY HAVE, HOWEVER, AGREED TO GIVE UP THEIR MONOPOLY POSITION AND TO CONTINUE OPERATIONS IN HAITI IF

THE GOH CONFIRMS THE TENTATIVE AGREEMENT OF AUGUST 2, WHICH PROVIDES FOR SPECIFIC BENEFITS TO ACCRUE TO THE COMPANY AS COMPENSATION FOR THE

LOSS OF THE MONOPOLY. EVEN IF AGREEMENT IS REACHED, THEY WILL BE WATCHING THE SITUATION CLOSELY AND WILL KEEP EMBASSY INFORMED. ALTHOUGH PROGRESS HAS BEEN MADE IN THE SETTLEMENT OF THE DISPUTE, ONE OR THE OTHER OF THE PARTIES MIGHT CHANGE HIS MIND OR NEW POINTS MIGHT ARISE. THE DEPARTMENT WILL BE INFORMED OF ANY CHANGES.

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FM AMEMBASSY PORT AU PRINCE
TO SECSTATE WASHDC 8367

C O N F I D E N T I A L SECTION 2 OF 2 PORT AU PRINCE 1511

7. EMBASSY COMMENTS:

A. RENEGOTIATION OF THE TELE-HAITI CONTRACT IS ONE OF A SERIES OF INDICATIONS LEADING TO EMBASSY CONCLUSION THAT GOH IS BEGINNING TO DEVELOP A CLEARER POLICY WITH RESPECT TO NATIONAL SOVEREIGNTY AND LIMITATIONS TO RIGHTS HAITI WILL GRANT TO FOREIGN INVESTORS (SEPARATE TELEGRAM WILL FOLLOW ON THIS SUBJECT).

B. ALSO OF INTEREST IS THE APPEARANCE OF RELATIVELY JUNIOR CABINET MEMBER JEANTY AS NEGOTIATOR AND SPOKESMAN FOR GOH. ORIGINALLY CONSIDERED SOMETHING OF A LIGHT-WEIGHT AND OPPORTUNIST, JEANTY WAS CHOSEN BY THE PRESIDENT TO UNDERTAKE THE DELICATE SECOND-PHASE NEGOTIATIONS IN PREFERENCE TO THE HEAVY-HANDED BLANCHET. AMERICAN INVESTORS FOUND HIM A VERY ABLE MAN AND A SKILLED NEGOTIATOR, AND HAD NO COMPLAINTS ABOUT HIS TACTICS.

C. THE PRESENCE OF FOREIGN SECRETARY BRUTUS THROUGHOUT THE NEGOTIATIONS WAS ANOTHER SURPRISE. THIS MAY HAVE BEEN THE RESULT OF AMBASSADOR'S DISCUSSION WITH HIM OF THE NEED FOR AN AMICABLE SOLUTION. IN ANY CASE, WE BELIEVE HIS PRESENCE HELPED KEEP NEGOTIATIONS ON AN EVEN KEEL AND PROVIDED HIM WITH GOOD BACKGROUND ON US-HAITIAN INVESTMENT DIFFICULTIES.

D. AT NO TIME WAS THE MINISTER NOMINALLY IN CHARGE OF TELECOMMUNICATIONS (PETIT) OR THE MINISTER WITH EXPERIENCE IN INVESTMENT MATTERS (FOURCAND) BROUGHT INTO THE NEGOTIATIONS. IN FACT, THE EMBASSY UNDERSTANDS THAT NEITHER OF THESE TWO OFFICIALS WERE INFORMED OF THE PROBLEM. IT WAS EVIDENT THROUGHOUT
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THE NEGOTIATIONS THAT DECISIONS WERE BEING MADE EITHER BY THE PRESIDENT OR BY SOMEONE OUTSIDE OF THE REGULAR CHAIN OF COMMAND IN WHOM THE PRESIDENT HAD FULL CONFIDENCE.
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